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CCPATENT
02581-P0588B WWW/MWK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	Joseph H. Sklar
Serial No. 09/612,055	Filing Date: July 7, 2000
Title of Application:	Ligament Shim
Confirmation No. 6809	Art Unit: 3732
Examiner	Melba N. Bumgarner

Box Petitions
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

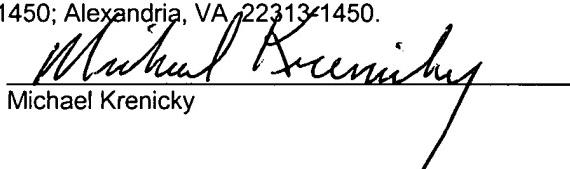
Petition for Question Not Provided For (37 C.F.R. § 1.182): Refund Request

Applicant hereby petitions the Commissioner for a question not specifically provided for pursuant to 37 C.F.R. 1.182. Applicant is requesting a refund because Applicant's previously filed response (within two months from a final office action) was lost in the mail. As a result Applicant filed an RCE, Preliminary Amendment Accompanying RCE, and Petition for Three Month Extension of Time in order to avoid abandonment. Applicant believes these fees are not reasonable based upon the facts below and respectfully requests a refund. Specifically, Applicants request refund for:

- \$ 790.00 Request for Continuing Application
- \$ 980.00 Petition for Three Months Extension of Time
- \$130.00 Petition Fee under 37 CFR § 1.17(h)
- **\$1900.00 Total loss to Applicant due to lost mail.**

Mailing Certificate: I hereby certify that this correspondence is today being deposited with the U.S. Postal Service as *First Class Mail* in an envelope addressed to: Commissioner for Patents and Trademarks; Post Office Box 1450; Alexandria, VA 22313-1450.

November 12, 2004


Michael Krenicky

Remarks

Pursuant to 37 CFR § 1.181, a petition may be taken by the Director to invoke the supervisory authority of the Director in appropriate circumstances. Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. . . Where facts are to be proven, proof in the form of affidavits or declarations (and exhibits, if any) must accompany the petition. Where the appropriate fee is required for a petition to the Director the appropriate section of this part will so indicate. The mere filing of a petition will not stay any period for reply that may be running against the application . . .

Pursuant to 37 CFR 1.182 All situations not provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the director. . . Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17(h).

Statement of Facts

On June 2, 2004 the Office sent a final action to the Applicant (See Exhibit A of the Declaration of Michael W. Krenicky, Esq. submitted herewith (hereinafter "Krenicky Decl."). The final office action contained a shortened statutory period for reply within three (3) months from the mailing date of the final action. On August 2, 2004, Applicant sent via first class mail a response to the June 2, 2004 Office letter (See Exhibit B of Krenicky Decl.). Thus Applicant responded within two months from a final office action. The August 2, 2004 response included, among other things:

(1) The name of Applicant, *i.e.* Joseph H. Sklar; Serial No. of Application (09/612,055); Confirmation No. 6809; Art Unit: 3732; and Examiner's name, Melba N. Bumgarner;

(2) A mailing certificate dated August 2, 2004 stating " Mailing Certificate: I hereby certify that this correspondence is today being deposited with the U.S. Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents and Trademarks; Post Office Box 1450; Alexandria, VA 22313-1450." This certificate was signed by an employee of St. Onge Steward Johnston & Reens, Ms. Lisa A. Evensen.

The August 2, 2004 Response to Final (Exhibit B of Krenicky Decl.) was filed by first class mail within two (2) months of the June 2, 2004 Final Official Action. (Exhibit A of Krenicky Decl.).

Normally, under such timing during prosecution of a patent application, a Response will either be considered by the Examiner, or the Examiner will send an Advisory Action to the Applicant. Then, Applicant must decide whether to abandon, file an RCE, appeal, or otherwise.

On November 10, the Applicant's attorney telephoned the USPTO to inquire as to the status of the application and learned that the USPTO had no record of receiving the August 2, 2004 Response (Exhibit B of Krenicky Decl.). See Paragraph 6 of Krenicky Decl.

At that late date (close to December 2, 2004 where the application will go abandoned absent a response), the filing of a petition would not stay any period of reply running against the applicant; thus Applicant was compelled to file an RCE application, along with the requisite Extension of Time Request in order to ensure review of the August 2, 2004 response on the record. (See November 12, 2004 RCE Application and related documents, Exhibit C of Krenicky Decl.).

Exhibits C includes: 1) Request for Continued Examination (RCE) Transmittal; 2) Fee Transmittal; Preliminary Amendment Accompanying RCE; Petition for Time Exten-

sion (three months); Two Sheets of Drawings; Drawing Cover Page, and \$1770.00 Check.

Request

Applicant requests a refund because August 2, 2004 Response (Exhibit B of Krenicky decl.) was mailed within TWO months of the June 2, 2004 Final Office Action (Exhibit A of Krenicky decl.). The certificate of mailing is in accordance with 37 CFR § 1.8 because it indicates that a response was mailed by first class mail prior to the expiration of the set period of reply, and was addressed to the Commissioner for Patents. Thus the August 2, 2004 submission was timely. Based upon the certificate of mailing indicating an August 2, 2004 mailing date, and the fact that the USPTO has not received this mailing, the application should be presumed lost in the mail. Such a delay is no fault of the Applicant. Moreover, the preliminary amendment accompanying the RCE and the August 2, 2004 Response are substantially identical. Compare Preliminary amendment of Exhibit C with Exhibit B of Krenicky decl. Accordingly, it is reasonable to consider the RCE filing (Exhibit C of Krenicky Decl.) as being a Response to Final filed within two months of mailing. Applicant urges such a determination and respectfully requests a refund of all fees incurred by the filing of the RCE application, extension of time, and this petition.

Accordingly, applicant requests a refund of \$1900.00.

This is also a request to credit Deposit Account No. 19-4516 for this refund.

Applicant has enclosed the credit card authorization for petition fee of \$130.00 under 37 C.F.R. §1.17(h). If there is any fee deficiency or overpayment, please charge or credit Account No 19-4516.

Page 5
Serial No. 09/612,055
Response to Official Action

Respectfully submitted,



Wesley W. Whitmyer, Jr., Registration No. 33,558
Michael W. Krenicky, Registration No. 45,411
Attorneys for Applicant
ST.ONGE STEWARD JOHNSTON & REENS LLC
986 Bedford Street
Stamford, CT 06905-5619
203 324-6155



PATENT
02581-P0588B WWW/MWK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	Joseph H. Sklar
Serial No. 09/612,055	Filing Date: July 7, 2000
Title of Application:	Ligament Shim
Confirmation No. 6809	Art Unit: 3732
Examiner	Melba N. Bumgarner

Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

Declaration of Michael W. Krenicky, Esq.

Dear Sir:

The undersigned, Michael W. Krenicky, declares that:

- 1) My name is Michael W. Krenicky and I am a patent attorney at St. Onge Steward Johnston & Reens LLC located at 986 Bedford Street, Stamford, CT 06905.
- 2) I am an Attorney of Record in the above-referenced case.
- 3) After June 2, 2004, I received a Final Office Action dated June 2, 2004 from the USPTO relating to the above-referenced case. A true and correct copy of that Official Action is attached hereto as Exhibit A.
- 4) On August 2, 2004, I ensured that a Response was filed with the USPTO responding to the June 2, 2004 Final Office Action. A true and correct copy of that response, along with a copy of the return receipt postcard submitted therewith is attached hereto as Exhibit B.
- 5) Lisa A. Evensen is my secretary who signed the certificate of mailing on August 2, 2004.

Page 2
Serial No. 09/612,055
Declaration of Michael W. Krenicky, Esq.

6. On November 10, 2004 I telephoned the USPTO, as well as the Examiner to inquire about the status of the above-referenced case, and learned that the August 2, 2004 response attached hereto as Exhibit B was never received by the USPTO.

7. On November 12, 2004, I ensured that a Request for Reexamination (RCE); Fee Transmittal; Preliminary Amendment Accompanying RCE; Petition for Time Extension (three months); Two Sheets of Drawings; Drawing Cover Page, and \$1770.00 Check were submitted to the USPTO in order to, among other things, avoid abandonment of the patent application. True and correct copies of these papers are attached hereto as Exhibit C.

8. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,



Michael W. Krenicky, Registration No. 45,411
Attorneys for Applicant
ST.ONGE STEWARD JOHNSTON & REENS LLC
986 Bedford Street
Stamford, CT 06905-5619
203 324-6155

IFCW Guy SW

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re: Lee, et al. Confirmation No.: 9550
 Appl. No.: 10/744,502
 Filed: 12/21/2003
 For: SPEAKER SYSTEM HAVING A FRONT SPEAKER
 INTEGRATED WITH A REFLECTION-TYPE SURROUND SPEAKER

Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

Petition To Grant Filing Date And To Refund Petition Fee

As set forth in MPEP §506.02, Applicant hereby petitions to grant the proper filing date of December 23, 2003 rather than December 21, 2003 for the above-identified patent application. The following is enclosed as evidence of December 23, 2003 being the correct filing date under 37 CFR § 1.10:

1. A copy of the Cover Sheet for the Application showing the Express Mail Number; and
2. A copy of the Express Mail Receipt marked by the United States Post Office as being mailed at 6:39 p.m. on December 23, 2003.

There is no error on the part of Applicant. Accordingly, Applicant respectfully requests the granting of December 23, 2003 as the filing date.

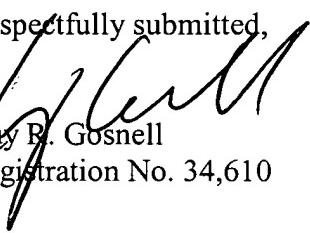
A check in the amount of \$130.00 in payment of the petition fee as set forth in 37 CFR §1.17(i) is enclosed herewith. Any additional fee may be charged or any overpayment credited to our Deposit Account No. 16-0605. Because no defect existed, however, Applicant also respectfully requests refund of the petition fee.

11/16/2004 YPOLITE1 00000070 10744502

01 FC:1460

130.00 0P

Respectfully submitted,



Guy R. Gosnell
 Registration No. 34,610

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UNITED STATES PATENT AND TRADEMARK OFFICE

MWIC
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/612,055	07/07/2000	Joseph H. Sklar	SKLAR-21	6809

7590 06/02/2004

Pandiscio & Pandiscio
470 Totten Pond Road
Waltham, MA 02451-1914

RECEIVED
PANDISCIO & PANDISCIO

JUN 4 2004

BY _____

EXAMINER

BUMGARNER, MELBA N

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication/concerning this application or proceeding.



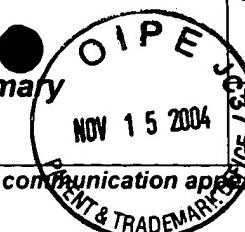
8/2/04 "Amend. due" (initials)
9/2/04 "Amend. due" (initials)
10/2/04 "Amend. due" (initials)
11/2/04 "Amend. due" (initials)

(M)

DOCKETED BY [Signature]
ACTION Final Amend. due
DUE DATE 8-2-04 (Final)
9-2-04

DOCKETED BY [Signature]
ACTION Notice of Appeal
DUE DATE 8-2-04 (Final)
9-2-04

Office Action Summary



Application No.

09/612,055

Applicant(s)

SKLAR, JOSEPH H.

Examiner

Sueba Bumgamer

Art Unit

3732

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 February 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 9-25 is/are pending in the application.
 - 4a) Of the above claim(s) 9-13 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 14-25 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

Art Unit: 3732

**DETAILED ACTION*****Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 14-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The new claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not describe the first and second ends of the shim body "being substantially planar and of substantially the same configuration in plan view, substantially the same size, and normal to the axis". The features of the location of the shim hole as claimed, the other surface is a flat surface, two substantially flat parallel surfaces, and end edges of one end are beveled have not been described. Also, "end edges" and "atraumatic bearing surfaces" are new terminology introduced.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 3732

4. Claims 14-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Kim. The claims were considered as if the new matter limitations were not present. Kim discloses a ligament shim comprising a body having a first end and a second end, an axis extending from the first end to the second end, at least two surfaces extending from the first end to the second end and substantially parallel to the axis, at least one of the two surfaces being arc-shaped and a shim hole (figures 1,3). The arc-shaped surface extends outwardly from the axis. The two surfaces are arc-shaped surfaces and are opposed surfaces and extend inwardly toward each other. The surfaces comprise four surfaces including two arc-shaped surfaces and two outwardly rounded surfaces.

Response to Arguments

5. Applicant's arguments filed February 17, 2004 have been fully considered but they are not persuasive. The new claims contain features that are new matter.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melba Bumgarner whose telephone number is 703-305-0740. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Melba Bumgarner

Melba Bumgarner
Patent Examiner

Kevin Shaver
KEVIN SHAVER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700



BEST AVAILABLE COPY

Case No. 02581-P0588B WWW/MWK/iae

Applicant: Joseph H. Sklar

SN: 09/612,055

Unit 3732

Filed July 7, 2000

For: Ligament Shim

Receipt is hereby acknowledged of Two Sheets of Drawings, Drawing Cover
Page, and Response to Final Official Action of June 2, 2004

Mailed August 2, 2004

Office Action Date: June 2, 2004

Commissioner
for Patents



PATENT
02581-P0588B WWW/MWK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Serial No. 09/612,055	Filing Date: July 7, 2000
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Examiner	Melba N. Bumgarner

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO FINAL OFFICIAL ACTION

Dear Sir:

This is a response to the outstanding Final Office Action mailed on June 2, 2004. Applicant believes that the entry of this Response is proper as it places the application in condition for allowance. Applicant believes that no fee is due in connection with the filing of this Response. However, if any fee is due please charge Deposit Account No. 19-4516.

Mailing Certificate: I hereby certify that this correspondence is today being deposited with the U.S. Postal Service as *First Class Mail* in an envelope addressed to: Commissioner for Patents and Trademarks; Post Office Box 1450; Alexandria, VA 22313-1450.

August 2, 2004

Lisa A. Evenson

Lisa A. Evenson

In the Specification

(Note: An amendment to the specification was submitted on October 22, 2003, causing page numbers to change from the originally filed application. Please amend the specification to add the following paragraphs to the pages as cited within the October 22, 2003 amended specification.)

On page 9, please add the following between the second and third full paragraphs:

Fig. 14a is a schematic illustration of a centerline shim having two opposing surfaces in the shape of an arc;

Fig. 14b is a schematic illustration of a shim having an outer surface in the shape of an arc;

On page 14, at the end of the only paragraph continuing from page 13, please add the following:

Fig. 14a shows one embodiment of the present invention having two opposing surfaces in the shape of an arc. Shim body (36) is shown having a first end (60) and a second end (62), and an axis (64) extending from first end (60) through second end (64). First end (60) and second end (62) are shown as being substantially planar and of substantially the same configuration in plan view, substantially the same size and normal to the axis. First surface (66) and second surface (68) extend from first end (60) to second end (62) substantially parallel to axis (64). First surface (66) and second sur-

face (68) are arc shaped. Shim hole (39) extends from first surface (66) to second surface (68). Apart from shim hole (39), the shim is devoid of any further opening. Wall (70) is also shown extending from first surface (66) to second surface (68). Second wall (71) is also shown extending from first surface (66) to second surface (68) parallel to wall (70). Optionally wall (70) may be rounded. Shim hole (39) extends from a crest of first arc-shaped surface (66) to a mid-arc portion of second arc-shaped surface (68).

Fig. 14b shows another embodiment of the present invention similar to that shown in Fig. 11. Shim body (72) is shown having a first end (74) and a second end (76), and an axis (78) extending from first end (74) through second end (76). First end (74) and second end (76) are shown as being substantially planar and of substantially the same configuration in plan view, substantially the same size and normal to the axis. First surface (80) and second surface (82) extend from first end (74) to second end (76) substantially parallel to axis (78). First surface (80) is arc shaped. Second surface (82) is substantially flat. Shim hole (39) extends from first surface (80) to second surface (82). Apart from shim hole (39), the shim is devoid of any further opening.

In the Claims

Claims 1-13 (cancelled)

Claim 14 (Previously presented): A ligament shim for insertion into a bone tunnel, the ligament shim comprising:

a body having a first end and a second end, and an axis extending from the first end to the second end;

the first and second ends being substantially planar and of substantially the same configuration in plan view, substantially the same size, and normal to the axis;

at least two surfaces extending from the first end to the second end and substantially parallel to the axis;

at least one of the two surfaces being arc-shaped; and

a shim hole extending from the arc-shaped surface to the other of said two surfaces, said body being otherwise devoid of any further opening.

Claim 15 (Previously presented): The ligament shim in accordance with claim 14 wherein said one arc-shaped surface extends outwardly from the axis.

Claim 16 (Previously presented): The ligament shim in accordance with claim 15 wherein the other of said at least one of surfaces being arc-shaped is a flat surface.

Claim 17 (Previously presented): The ligament shim in accordance with claim 16 wherein said shim hole extends from a crest of said one arc-shaped surface to the other of said two surfaces.

Claim 18 (Previously presented): The ligament shim in accordance with claim 14 wherein said two surfaces are arc-shaped surfaces and are opposed surfaces and extend inwardly toward each other.

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Serial No. 09/612,055
Response to Official Action

Claim 19 (Previously presented): The ligament shim in accordance with claim 18 wherein said shim hole extends from a first of said arc-shaped surfaces to a second of said arc-shaped surfaces.

Claim 20 (Previously presented): The ligament shim in accordance with claim 14 wherein said two surfaces are arc-shaped and opposed to each other, a first of the arc-shaped surfaces extending outwardly from the axis and a second of the arc-shaped surfaces extending inwardly toward the axis.

Claim 21 (Previously presented): The ligament shim in accordance with claim 20 wherein said shim hole extends from a crest of the first arc-shaped surface to a mid-arc portion of the second arc-shaped surface.

Claim 22 (Previously presented): The ligament shim in accordance with claim 14 wherein said at least two surfaces extending from the first end to the second end comprise four surfaces including two arc-shaped surfaces and two substantially flat parallel surfaces.

Claim 23 (Previously presented): The ligament shim in accordance with claim 14 wherein said at least two surfaces extending from the first end to the second end comprise four surfaces including two arc-shaped surfaces and two outwardly rounded surfaces.

Claims 24 & 25 (cancelled)

Remarks

Claims 9-25 are pending in this application prior to entry of the above-amendments. Claims 9-13, 24 and 25 have been cancelled by this amendment. Applicant urges that claims 14-23 are now in condition for allowance.

The present instrument relates to an orthotic device suitable for use as a ligament shim.

With respect to the Examiners objection to "end edges" and "atraumatic bearing surfaces", Applicant has cancelled claims 24 and 25, thus obviating the Examiners objections. However, Applicant submits that claims 14-23 are supported by the specification and urges reconsideration. Specifically, support in the specification can be found by reference to Figs. 11 and 14 which show two embodiments of the invention. One of ordinary skill in the art would understand by viewing Figs. 11 and 14, that the device shows first and second ends of the shim body being substantially planar and of substantially the same configuration in plan view, substantially the same size, and normal to an axis. Moreover, the location of the shim hole 39 is clearly depicted. Fig. 14 shows two substantially flat parallel surfaces. Ghost lines indicate that these flat walls or surfaces can be outwardly rounded.

Applicant has further amended the specification to clarify various embodiments and submits two explanatory drawings herewith. It is respectfully submitted that these features were disclosed in original Figs. 11 and 14, and no new matter has been added by this amendment to the specification.

The Examiner has rejected claim 14 as anticipated by Kim. Applicant submits that independent claim 14 is not anticipated because the reference fails to teach or suggest all the claim limitations. Independent claim 14 requires, among other things, the first and second ends being substantially planar and of substantially the same configu-

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Serial No. 09/612,055
Response to Official Action

ration in plan view, substantially the same size, and normal to the axis. Claim 14 also requires a shim hole . . . [and] body being otherwise devoid of any further opening. Nowhere, does Kim disclose these limitations. Thus, claim 14 is not anticipated by Kim.

Finally, Kim does not make the claimed invention obvious. Kim relates generally to an anchor device not a shim, and describes, among other things, a bullet-like upper configuration tapered to a rounded tip. One of ordinary skill in the art would not be motivated by Kim to make a device having first and second ends being substantially planar and of substantially the same configuration in plan view, substantially the same size, and normal to the axis, and also having only one hole. Kim may just as likely have had a pointed end in the shape of an arrow, than ends of substantially the same configuration as required by the present invention.

It is respectfully submitted that new claims 14-23, all of the claims remaining in the application, are in order for allowance, and early notice to that effect is respectfully requested. If the Examiner has any questions about this communication he is invited to call Michael Krenicky at (203) 324-6155 to discuss.

Respectfully submitted,



Wesley W. Whitmyer, Jr., Registration No. 33,558
Michael W. Krenicky, Registration No. 45,411
Attorneys for Applicant
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203 324-6155



PATENT
02581-P0588B WWW/MWK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	Joseph H. Sklar
Serial No. 09/612,055	Filing Date: July 7, 2000
Title of Application:	Ligament Shim
Confirmation No. 6809	Art Unit: 3732
Examiner	Melba N. Bumgarner

Commissioner for Patents
Mail Stop AF
Post Office Box 1450
Alexandria, VA 22313-1450

Transmittal of Additional Drawings

Dear Sir or Madam:

Applicant submits herewith two (2) sheets of drawings with regard to the subject application.

Respectfully submitted,

Wesley W. Whitmyer, Jr., Registration No. 33,558
Michael W. Krenicky, Registration No. 45,411
Attorneys for Applicant
ST.ONGE STEWARD JOHNSTON & REENS LLC
986 Bedford Street
Stamford, CT 06905-5619
203 324-6155

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August 2, 2004

Lisa A. Evensen

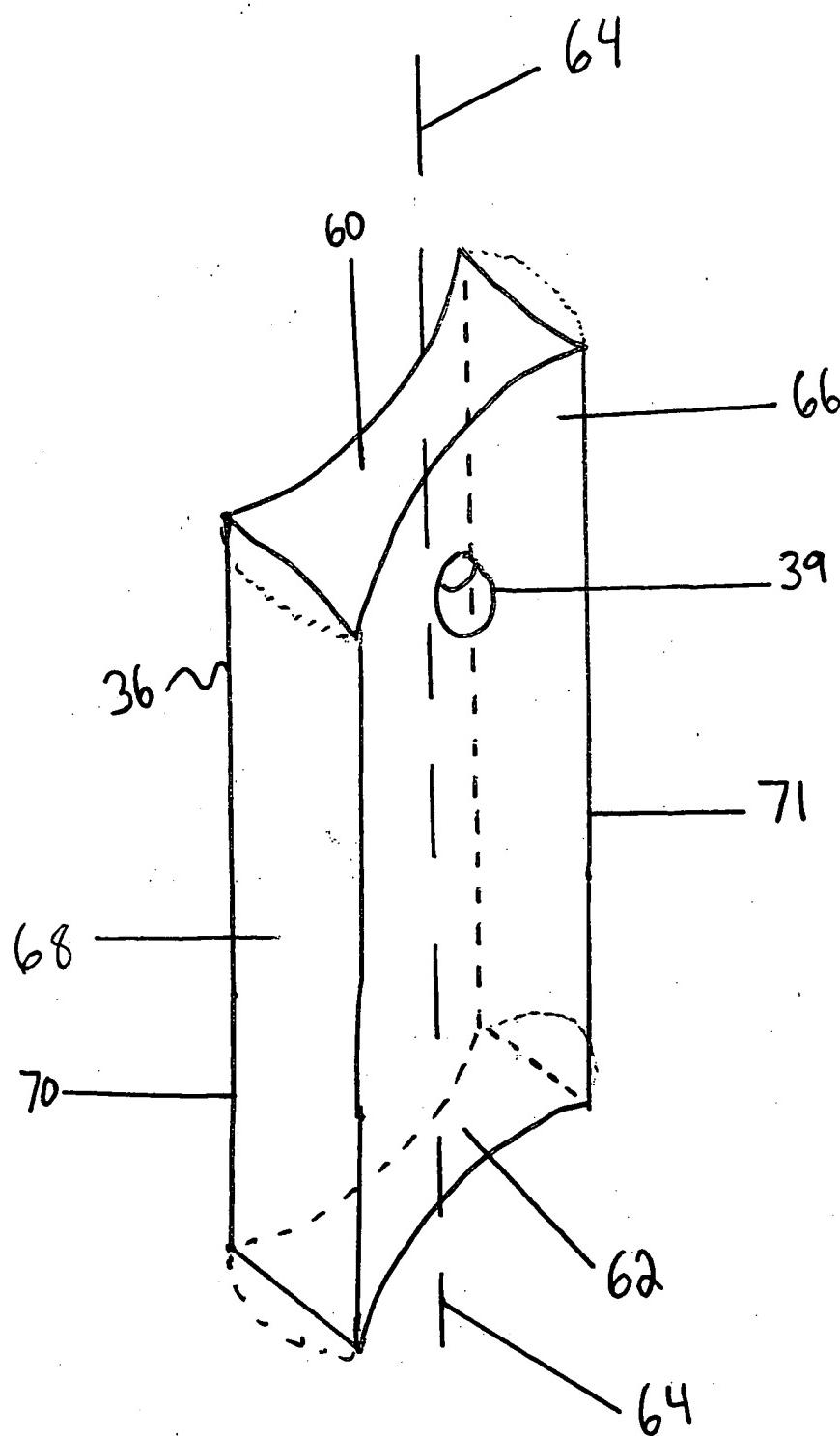


Fig. 14a

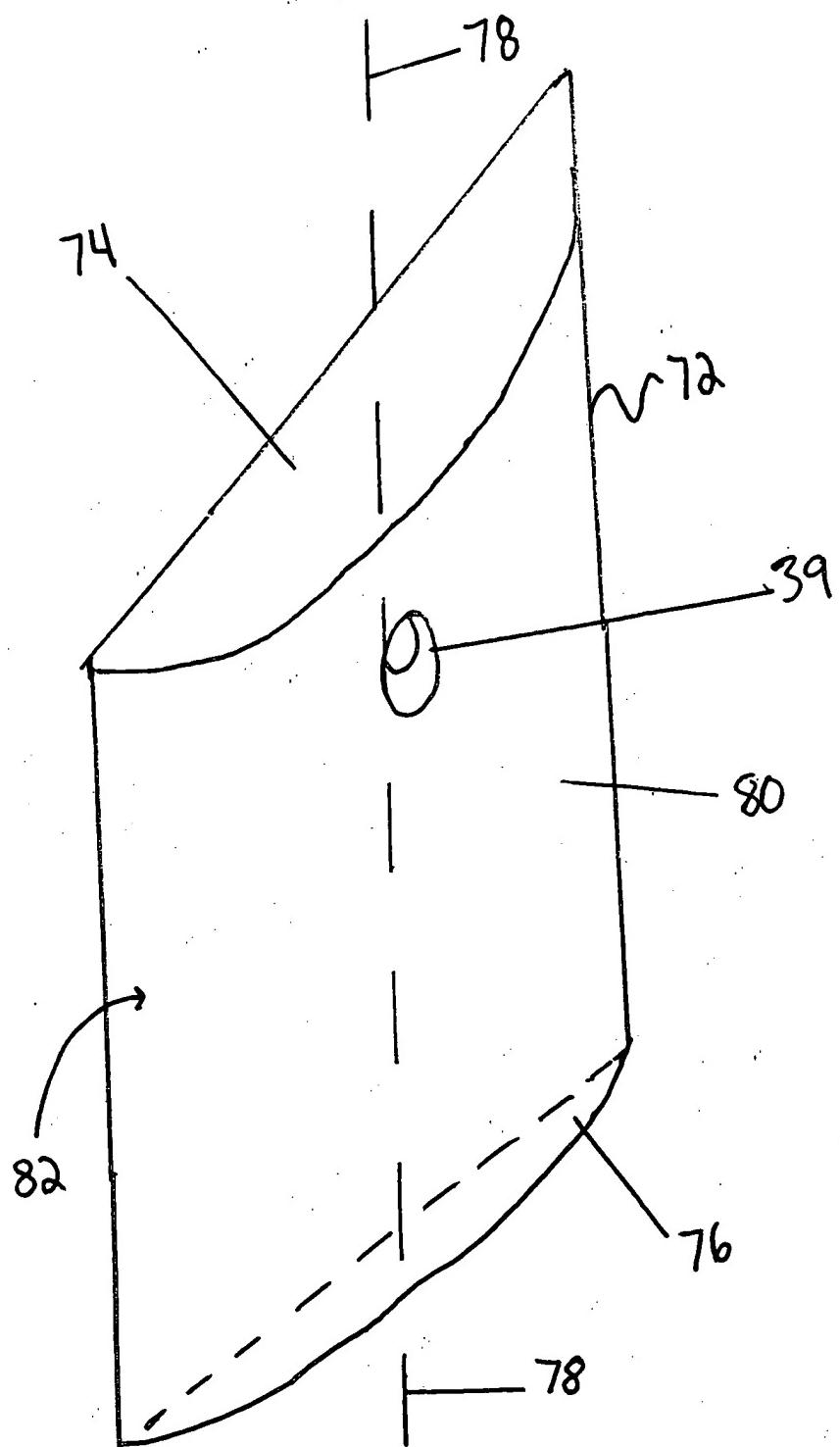


Fig. 14 b

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060602

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11/12/04 OPER-LAE 1,770.00 02581-P0588B Request for Continued Examination.

ST. ONGE STEWARD JOHNSTON
& REENS LLC

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DATE AMOUNT
11/12/04 *\$1,770.00*

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W. J. Steward ✓

ST. ONGE STEWARD JOHNSTON & REENS LLC

060602

COP Commissioner of Patents & Trademarks 60602 11/12/04 1,770.00
11/12/04 OPER-LAE 1,770.00 02581-P0588B Request for Continued Examination.



Case No. 02581-P0588B WWW/MWK/lae

Applicant: Joseph H. Sklar

For: Ligament Shim

Receipt is hereby acknowledged of Request for Continued Examination (RCE) Transmittal, Fee Transmittal, Preliminary Amendment Accompanying RCE, Petition for Time Extension (three months), Two Sheets of Drawings, Drawing Cover Page, and \$1770.00 Check.

Mailed: November 12, 2004

Commissioner for Patents

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**REQUEST
FOR
CONTINUED EXAMINATION (RCE)
TRANSMITTAL**

Subsection (b) of 35 U.S.C. § 132, effective on May 29, 2000 provides for continued examination of an utility or plant application filed on or after June 8, 1995
See The American Inventors Protection Act of 1999 (AIPA).

<i>Application Number</i>	09/612,055
<i>Filing Date</i>	November 12, 2004
<i>First Named Inventor</i>	Joseph H. Sklar
<i>Group Art Unit</i>	3732
<i>Examiner Name</i>	Melba N. Bumgarner
<i>Attorney Docket Number</i>	02581-P0588B WWW/MWK

This is a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114 of the above-identified application

NOTE: 37 C.F.R. §1.114 is effective on May 29, 2000. If the above-identified application was filed prior to May 29, 2000, applicant may wish to consider filing a continued prosecution application (CPA) under 37 C.F.R. § 1.53 (d) (PTO/SB/29) instead of a RCE to be eligible for the patent term adjustment provisions of the AIPA. See Changes to Application Examination and Provisional Application Practice, Final Rule, 65 Fed. Reg. 50092 (Aug. 16, 2000); interim Rule 65 Red. Reg. 14865 (Mar. 20, 2000), 1233 Off. Gaz. Pat. Office 47 (Apr. 11, 2000), which established RCE practice.

1. Submission required under 37 C.F.R. § 1.114

- a. Previously submitted
- i. Consider the amendment(s)/reply under 37 C.F.R. 1.116 previously filed on _____
(Any unentered amendment(s) referred to above will be entered).
- ii. Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
- II. Other _____
- b. Enclosed
 - i. Amendment/Reply
 - ii. Affidavit(s)/Declaration(s)
 - iii. Information Disclosure Statement (IDS)
 - iv. Other _____

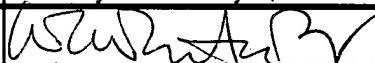
2. Miscellaneous

- a. Suspension of action on the above-identified application is requested under 37 C.F.R. § 1.103© for a period of _____ months. (Period of suspension shall be exceed 3 months; Fee under 37 C.F.R. § 1.17(i) required.)
- b. Other _____

3. Fees The RCE fee under 37 C.F.R. § 1.17(e) is required by 37 C.F.R. § 1.114 when the RCE is filed.

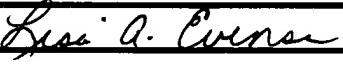
- a. The Director is hereby authorized to charge the following fees, or credit any overpayment to Deposit Account No. 19-4516.
 - i. RCE fee required under 37 C.F.R. § 1.17(e)
 - ii. Extension of time fee (37 C.F.R. §§ 1.136 and 1.17)
 - iii. Other Any Fee Deficiency
- b. Check in the amount of \$1770.00 is enclosed
- c. Payment by credit card (Form PTO-2038 enclosed)

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Name (Print / Type)	Wesley W. Whitmyer, Jr.	Registration No (Attorney/Agent)	33,558
Signature		Date	November 12, 2004

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner For Patents, PO Box 1450, Alexandria, VA 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on: November 12, 2004.

Name (Print / Type)	Lisa A. Evensen
Signature	

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**FEES TRANSMITTAL
for FY 2003**

Effective 01/01/2003. Patent fees are subject to annual revision

 Application claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT**

(\$ 1770)

Complete if Known	
Application No.	09/612,055
Filing Date	July 7, 2000
First Named Inventor	Joseph H. Sklar
Examiner Name	Melba N. Bumgarner
Art Unit	3732
Attorney Docket Number	02581-P0588B WWW/MWK

METHOD OF PAYMENT (check all that apply)

Check Credit Card Money Other None
 Deposit Account: order

Deposit Account Number

19-4516

Deposit Account Name

St.Onge Steward Johnston & Reens LLC

The Director is authorized to: (check all that apply)

- Charge fee(s) indicated below Credit any overpayments
 Charge any additional fees(s) during the pendency of this application
 Charge fees(s) indicated below, except for the filing fee to the above-identified deposit account

FEE CALCULATION**1. BASIC FILING FEE****Large Entity** **Small Entity**

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1101	790	2001	395	Utility filing fee	
1002	350	2202	175	Design filing fee	
1003	550	2003	275	Plant filing fee	
1004	790	2004	395	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1) (\$)					

2. EXTRA CLAIMS FEES FOR UTILITY AND REISSUE

Total Claims	-20**	Extra Claims	Fee from below	Fee Paid
		X	=	
Independent Claims	-3**=		X	
Multiple Dependent				

Large Entity **Small Entity**

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description
1201	18	2202	9	Claims in excess of 20
1201	88	2201	44	Independent claims in excess of 3
1203	300	2203	150	Multiple dependent claims, if not paid
1204	88	2204	44	**Reissue independent claims over original patent
1205	18	2205	9	**Reissue claims in excess of 20 over original patent
SUBTOTAL (2) (\$)				

** or number previously paid, if greater; For Reissues, see above

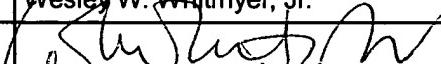
3. ADDITIONAL FEES

Large Entity	Fee Code	Fee (\$)	Small Entity	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing for or oath			
1052	50	2052	25	Surcharge - late provisional filing or cover sheet			
1053	130	1053	130	Non-English specification			
1812	2,520	1812	2,520	For filing a request for ex parte reexamination			
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action			
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action			
1251	110	2251	55	Extension for reply within first month			
1252	430	2252	215	Extension for reply within second month			
1253	980	2253	490	Extension for reply within third month			980
1254	1,530	2254	765	Extension for reply within fourth month			
1255	2,080	2255	1,040	Extension for reply within fifth month			
1401	340	2401	170	Notice of Appeal			
1402	340	2402	170	Filing brief in support of an appeal			
1403	300	2403	150	Request for oral hearing			
1451	1,510	1451	1,510	Petition to institute a public use proceeding			
1452	110	2452	55	Petition to revive - unavoidable			
1453	1,370	2453	685	Petition to revive - unintentional			
1501	1,370	2501	685	Utility issue fee (or reissue)			
1502	490	2502	245	Design issue fee			
1503	660	2503	330	Plant issue fee			
1460	130	1460	130	Petitions to the Commissioner			
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)			
1806	180	1806	180	Submission of Information Disclosure Stmt			
8021	40	8021	40	Recording each patent assignment per mmnrtv (times number of mnrpties)			
1809	790	2809	395	Filing a submission after final rejection (37 CFR 1.129(a))			
1810	790	2810	395	For each additional invention to be examined (37CFR 1.129(b))			
1801	790	2801	395	Request for Continued Examination (RCE)			790
1802	900	1802	900	Request for expedited examination of a design application			
Other fee (specify)							
*Reduced by Basic Filing Fee Paid							
SUBTOTAL (3) (\$)							1770

** or number previously paid, if greater; For Reissues, see above

SUBMITTED BY **St.Onge Steward Johnston & Reens LLC**

Complete (if applicable)

Name (Print/Type)	Wesley W. Whitmyer, Jr.	Registration No (Attorney/Agent)	33,558	Telephone	203 324-6155
Signature			Date	11/12/2004	

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038

This collection of information is required by 37CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering of information, preparing and submitting the completed application form to the USPTO. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form and/or suggestions for reducing this burden should be sent to the Chief Information Officer, Patent and Trademark Office, U.S. Department of Commerce; P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORM TO THIS ADDRESS. SEND TO: Commissioner for Patents; P.O. Box 1450; Alexandria, VA 22313-1450.

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PATENT
02581-P0588B WWW/MWK

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	Joseph H. Sklar
Serial No. 09/612,055	Filing Date: July 7, 2000
Title of Application:	Ligament Shim
Confirmation No. 6809	Art Unit: 3732
Examiner	Melba N. Bumgarner

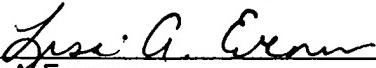
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Post Office Box 1450
Alexandria, VA 22313-1450

PRELIMINARY AMENDMENT ACCOMPANYING RCE

This Preliminary Amendment is being filed in conjunction with a Request for Continued Examination and is in response to the outstanding Final Office Action mailed June 2, 2004. A Petition for Three Months Time Extension to respond to the outstanding Final Office Action is also included as well as a check covering the appropriate fees. Applicant believes that no further fee is due in connection with the filing of this Response. However, if any further fee is due please charge Deposit Account No. 19-4516. Finally, Applicant previously filed a Response to Final Official Action of June 2, 2004 within the shortened statutory period for reply on August 2, 2004, which appears to be lost in the mail. Accordingly, Applicant filed a first reply within TWO months of the mailing date of the final office action. Hence, Applicant is separately filing a petition requesting refund of all fees associated with this RCE filing, i.e. \$1770 plus petition fee.

Mailing Certificate: I hereby certify that this correspondence is today being deposited with the U.S. Postal Service as *First Class Mail* in an envelope addressed to: Box RCE, Commissioner for Patents and Trademarks; Post Office Box 1450; Alexandria, VA 22313-1450.

November 12, 2004


Lisa A. Evensen

In the Specification

(Note: An amendment to the specification was submitted on October 22, 2003, causing page numbers to change from the originally filed application. Please amend the specification to add the following paragraphs to the pages as cited within the October 22, 2003 amended specification.)

On page 9, please add the following between the second and third full paragraphs:

Fig. 14a is a schematic illustration of a centerline shim having two opposing surfaces in the shape of an arc;

Fig. 14b is a schematic illustration of a shim having an outer surface in the shape of an arc;

On page 14, at the end of the only paragraph continuing from page 13, please add the following:

Fig. 14a shows one embodiment of the present invention having two opposing surfaces in the shape of an arc. Shim body (36) is shown having a first end (60) and a second end (62), and an axis (64) extending from first end (60) through second end (64). First end (60) and second end (62) are shown as being substantially planar and of substantially the same configuration in plan view, substantially the same size and normal to the axis. First surface (66) and second surface (68) extend from first end (60) to second end (62) substantially parallel to axis (64). First surface (66) and second sur-

face (68) are arc shaped. Shim hole (39) extends from first surface (66) to second surface (68). Apart from shim hole (39), the shim is devoid of any further opening. Wall (70) is also shown extending from first surface (66) to second surface (68). Second wall (71) is also shown extending from first surface (66) to second surface (68) parallel to wall (70). Optionally wall (70) may be rounded. Shim hole (39) extends from a crest of first arc-shaped surface (66) to a mid-arc portion of second arc-shaped surface (68).

Fig. 14b shows another embodiment of the present invention similar to that shown in Fig. 11. Shim body (72) is shown having a first end (74) and a second end (76), and an axis (78) extending from first end (74) through second end (76). First end (74) and second end (76) are shown as being substantially planar and of substantially the same configuration in plan view, substantially the same size and normal to the axis. First surface (80) and second surface (82) extend from first end (74) to second end (76) substantially parallel to axis (78). First surface (80) is arc shaped. Second surface (82) is substantially flat. Shim hole (39) extends from first surface (80) to second surface (82). Apart from shim hole (39), the shim is devoid of any further opening.

In the Claims

Claims 1-13 (cancelled)

Claim 14 (Previously presented): A ligament shim for insertion into a bone tunnel, the ligament shim comprising:

a body having a first end and a second end, and an axis extending from the first end to the second end;

the first and second ends being substantially planar and of substantially the same configuration in plan view, substantially the same size, and normal to the axis;

at least two surfaces extending from the first end to the second end and substantially parallel to the axis;

at least one of the two surfaces being arc-shaped; and

a shim hole extending from the arc-shaped surface to the other of said two surfaces, said body being otherwise devoid of any further opening.

Claim 15 (Previously presented): The ligament shim in accordance with claim 14 wherein said one arc-shaped surface extends outwardly from the axis.

Claim 16 (Previously presented): The ligament shim in accordance with claim 15 wherein the other of said at least one of surfaces being arc-shaped is a flat surface.

Claim 17 (Previously presented): The ligament shim in accordance with claim 16 wherein said shim hole extends from a crest of said one arc-shaped surface to the other of said two surfaces.

Claim 18 (Previously presented): The ligament shim in accordance with claim 14 wherein said two surfaces are arc-shaped surfaces and are opposed surfaces and extend inwardly toward each other.

Claim 19 (Previously presented): The ligament shim in accordance with claim 18 wherein said shim hole extends from a first of said arc-shaped surfaces to a second of said arc-shaped surfaces.

Claim 20 (Previously presented): The ligament shim in accordance with claim 14 wherein said two surfaces are arc-shaped and opposed to each other, a first of the arc-shaped surfaces extending outwardly from the axis and a second of the arc-shaped surfaces extending inwardly toward the axis.

Claim 21 (Previously presented):The ligament shim in accordance with claim 20 wherein said shim hole extends from a crest of the first arc-shaped surface to a mid-arc portion of the second arc-shaped surface.

Claim 22 (Previously presented):The ligament shim in accordance with claim 14 wherein said at least two surfaces extending from the first end to the second end comprise four surfaces including two arc-shaped surfaces and two substantially flat parallel surfaces.

Claim 23 (Previously presented):The ligament shim in accordance with claim 14 wherein said at least two surfaces extending from the first end to the second end comprise four surfaces including two arc-shaped surfaces and two outwardly rounded surfaces.

Claims 24 & 25 (cancelled)

Remarks

Claims 9-25 are pending in this application prior to entry of the above-amendments. Claims 9-13, 24 and 25 have been cancelled by this amendment. Applicant urges that claims 14-23 are now in condition for allowance.

The present instrument relates to an orthotic device suitable for use as a ligament shim.

With respect to the Examiners objection to "end edges" and "atraumatic bearing surfaces", Applicant has cancelled claims 24 and 25, thus obviating the Examiners objections. However, Applicant submits that claims 14-23 are supported by the specification and urges reconsideration. Specifically, support in the specification can be found by reference to Figs. 11 and 14 which show two embodiments of the invention. One of ordinary skill in the art would understand by viewing Figs. 11 and 14, that the device shows first and second ends of the shim body being substantially planar and of substantially the same configuration in plan view, substantially the same size, and normal to an axis. Moreover, the location of the shim hole 39 is clearly depicted. Fig. 14 shows two substantially flat parallel surfaces. Ghost lines indicate that these flat walls or surfaces can be outwardly rounded.

Applicant has further amended the specification to clarify various embodiments and submits two explanatory drawings herewith. It is respectfully submitted that these features were disclosed in original Figs. 11 and 14, and no new matter has been added by this amendment to the specification.

The Examiner has rejected claim 14 as anticipated by Kim. Applicant submits that independent claim 14 is not anticipated because the reference fails to teach or suggest all the claim limitations. Independent claim 14 requires, among other things, the first and second ends being substantially planar and of substantially the same configu-

Page 7
Serial No. 09/612,055
Response to Official Action

ration in plan view, substantially the same size, and normal to the axis. Claim 14 also requires a shim hole . . . [and] body being otherwise devoid of any further opening. Nowhere, does Kim disclose these limitations. Thus, claim 14 is not anticipated by Kim.

Finally, Kim does not make the claimed invention obvious. Kim relates generally to an anchor device not a shim, and describes, among other things, a bullet-like upper configuration tapered to a rounded tip. One of ordinary skill in the art would not be motivated by Kim to make a device having first and second ends being substantially planar and of substantially the same configuration in plan view, substantially the same size, and normal to the axis, and also having only one hole. Kim may just as likely have had a pointed end in the shape of an arrow, than ends of substantially the same configuration as required by the present invention.

It is respectfully submitted that new claims 14-23, all of the claims remaining in the application, are in order for allowance, and early notice to that effect is respectfully requested. If the Examiner has any questions about this communication he is invited to call Michael Krenicky at (203) 324-6155 to discuss.

Respectfully submitted,



Wesley W. Whitmyer, Jr., Registration No. 33,558
Michael W. Krenicky, Registration No. 45,411
Attorneys for Applicant
ST.ONGE STEWARD JOHNSTON & REENS LLC
986 Bedford Street
Stamford, CT 06905-5619
203 324-6155



PATENT

02581-P0588B WWW/MWK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	Joseph H. Sklar
Serial No. 09/612,055	Filing Date: July 7, 2000
Title of Application:	Ligament Shim
Confirmation No. 6809	Art Unit: 3732
Examiner	Melba N. Bumgarner

MAIL STOP FEE AMENDMENT

Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

Response Transmittal and
Petition For Time Extension (37 CFR 1.136(A))

Dear Sir:

1. This is a petition for an extension of the time for a total period of three (3) months to respond to the Office Letter mailed on June 2, 2004.
2. A response in connection with the matter for which this extension is requested is filed herewith.
3. Calculation of extension fee (37 CFR 1.17). \$980.00 Extension Fee is due with this request.

Mailing Certificate: I hereby certify that this correspondence is today being deposited with the U.S. Postal Service as *First Class Mail* in an envelope addressed to: Box RCE, Commissioner for Patents and Trademarks; Post Office Box 1450; Alexandria, VA 22313-1450.

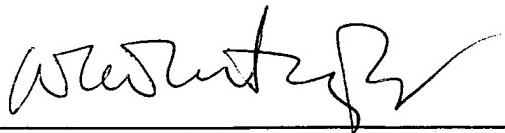
November 12, 2004


Lisa A. Evensen

Page two
Serial No. 09/612,055
Time Extension Request

4. Fee Payment. Attached is a check in the sum of \$1770.00, of which \$980 is intended to cover this Petition for Time Extension. This is also a petition and a request to charge to Account No. 19-4516 for any additional extension and/or fee as may be required or credit for any excess fee paid.

Respectfully submitted,



November 12, 2004

Wesley W. Whitmyer, Jr., Registration No. 33,558
Michael W. Krenicky, Registration No. 45,411
Attorneys for Applicant
ST.ONGE STEWARD JOHNSTON & REENS LLC
986 Bedford Street; Stamford, CT 06905-5619
203 324-6155



PATENT
02581-P0588B WWW/MWK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Box RCE
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Post Office Box 1450
Alexandria, VA 22313-1450

Transmittal of Additional Drawings

Dear Sir or Madam:

Applicant submits herewith two (2) sheets of formal drawings with regard to the subject application.

Respectfully submitted,

November 12, 2004

Wesley W. Whitmyer, Jr., Registration No. 33,558
Michael W. Krenicky, Registration No. 45,411
Attorneys for Applicant
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November 12, 2004

Lisa A. Evensen

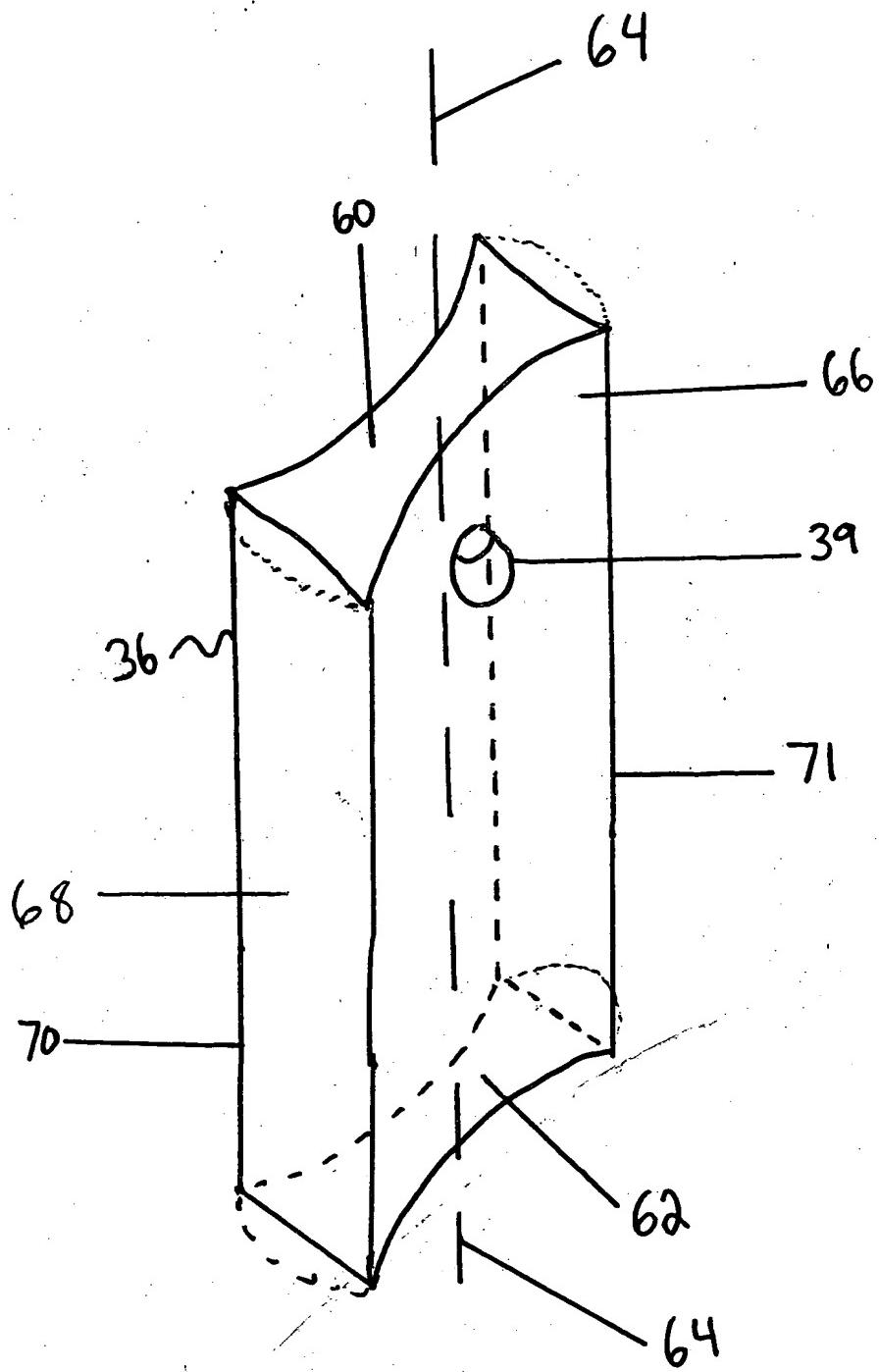


Fig. 14a

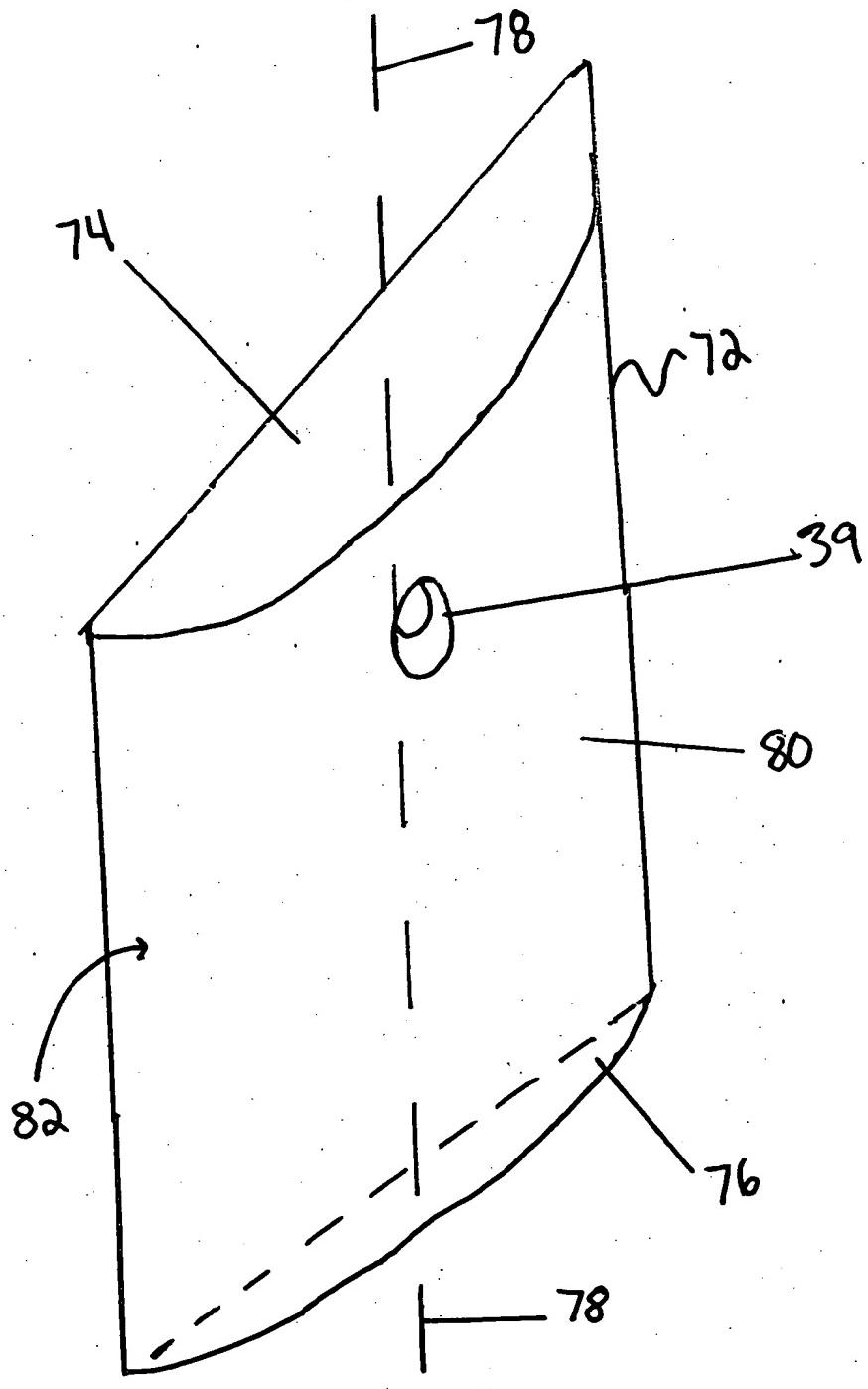


Fig. 14b

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